IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1571 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
MANHARBHAI BABURAM GOHIL & 2

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Appearance :
PUBLIC PROSECUTOR for Appellant
MR SHAKEEL A QURESHI for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. Instant appeal is preferred by the appellant – State of Gujarat against the judgment and order delivered by Additional Sessions Judge, Fast Track Court NO.1, Vadodara on 22.09.2004 in Atrocity Case No.47/2001 whereby the present respondents being accused of the said Atrocity Case came to be acquitted for the charges levelled against them under Sections 323, 506(2) of the Indian Penal Code as well as under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. Heard learned APP Mr.A.J.Desai for the appellant – State of Gujarat. Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.Shakeel A. Qureshi waives service of notice of admission for the respondents.
3. Learned APP Mr.A. J. Desai for the appellant – State of Gujarat as well as learned advocate Mr.Shakeel A. Qureshi for the respondents requested this Court to take up this appeal for final hearing as the Record & Proceedings of the Sessions Case has been summoned from the trial Court and was available with this Court. They also further submitted that they would assist this Court by supplying extra copies of the evidence recorded and extra copies of the documents produced during the trial. In the facts and circumstances of this case, the request made by learned counsels is granted and the matter is taken up for final hearing.
4. The incident in question has occurred at Village : Dethan of

Karjan Taluka, District : Vadodara on 06.11.1999 at 10.00 p.m. The complaint has been preferred by the complainant – Bhikhabhai Khodabhai after ten days of the incident i.e. on 16.11.1999. Accordingly, the complainant resided at Village : Dethan with his family members was doing agriculture work. On 1611.1999 at about 10.00 p.m. at his residence he himself, his wife Manjulaben, his son Rakeshbhai and his neighbour Madhavbhai Budhabhai were doing some work in their house and one Maganbhai Vasava was also doing the work of white wash of one wall of the house, all the three accused came to the house of the complainant. Earlier, according to the complainant, the accused had refused to the complainant to draw water from the well of Corporation and the complainant was threatened that the complainant should not ask for the water from this joint well. In pursuance of that the accused had visited the house of the complainant and he was threatened that if the complainant had asked for water from the well, his legs would be broken. Accused – Raturam Baburam Gohil stated that he was a press reporter and police would do nothing to them. It was further the case of the complainant that the accused insulted his caste and hence, the complaint came to be filed. Crime being registered. A charge-sheet was filed in the Court of learned Judicial Magistrate, First Class and the case was committed to the Special Court and was made over to the trial Court. The trial

Court framed charges against the accused, vide Ex.4, to which each of the accused pleaded not guilty. Accused, therefore, put to trial and the prosecution examined as many as eight witnesses and produced on record necessary documents to prove its case. The trial Court, thereafter, recorded the further statements of each of the accused under Section 313 of the Criminal Procedure Code and, thereafter, the trial Court heard the prosecution and defense in detail and came to the abovesaid conclusion to acquit the accused and hence, the present appeal by the State. It is noted that the accused have examined one defense witness at Ex.65 Dr.Rakeshbhai Bansibhai Patel to prove that on 06.11.1999 accused Raturam Baburam Gohil was an indoor patient at Community Health Centre, Karjan on account of diarrhea.

5. We have gone through the evidence recorded thoroughly and re-appreciated the evidence to assess the reasonings assigned by the trial Court for acquittal. We have considered the vital features of the matter and reasonable probabilities arising out of the circumstances of the evidence recorded during the trial. We have taken into consideration the contention raised by the appellant as well as respondents in this appeal. We have undertaken threadbare scrutiny of the reasons assigned by the trial Judge for acquittal.

6. Re-appreciating the evidence of material witnesses i.e. P.W.1 - Bhikhabhai Khodabhai Vasava Ex.46, P.W.2 – Manjulaben

Bhikhabhai Vasava, Ex.52, P.W.3 – Narvatbhai Vithalbhai Odd, Ex.53, P.W.4 - Rafikbhai Ahmedbhai Ghachi, Ex.54, P.W.6 – Mangalbhai @ Maganbhai Dhanjibhai Vasava, Ex.58 and P.W.7 – Madhavbhai Budhabhai Khod, Ex.59, it clearly appears that the cause of dispute is in respect of drawing water from the Corporation well by the complainant. It is the case of the complainant that for drawing the water, the accused had taken Rs.5,500/- from him and the complainant also produced on record vide Ex.47 a receipt of the same. When we taken into consideration Ex.47 a receipt, it is found that the said receipt relates to one Milind Uplekar about the tube-well of Water Supply Corporation and that tube-well was administered by the Water Supply Corporation and the accused had nothing to do with the said well and when we, therefore, the evidence of complainant and his wife is tested to this touchstone, it appears that the cause of dispute, as has been made out by the complainant, in its root, appears to be doubtful. It is found from the cross-examination of the complainant that accused – Manharbhai had filed one Criminal Complaint against the brother of the complainant on 04.11.1999, as altercation took place between them, but the complainant blindly refused this fact. While accused established on record that such complaint was filed by accused – Manharbhai and that is an admitted fact in the evidence of P.W.2 – Manjulaben. While evaluating the evidence of the complainant and Manjulaben in respect of

the incident, we find contradictions to the root of the case as to the word used by the accused about insulting the caste of the complainant which is noted by the trial Court in para-17 of its judgment. P.W.5 – Narvatbhai has not supported the prosecution case. While, P.W.6 – Mangalbhai @ Mganbhai though stated that accused abused the complainant and insulted his caste, but he also stated that, at that time, he was inside the house and when he came out along with Manjulaben, accused had already left that place.

7. With the above scenario of the evidence, when we appreciate the fact into consideration i.e. firstly, late filing of FIR by ten days without any explanation and secondly the evidence of defense witness Rakeshbhai, it is found that the case of the prosecution is doubtful and cannot be said to have been established beyond reasonable doubt. There is no explanation that why after ten days of the incident FIR was filed and what prevented the complainant not to file FIR earlier. It is also the case of one of the accused Raturam Baburam Gohil that he was indoor patient from 06.11.1999 to 08.11.1999 at Community Health Centre, Karjan and defense witness examined at Ex.65 Dr.Rakeshbhai corroborates this contention fully. His say could not be dislodged by the prosecution, though he is cross-examinated by the defense in detail.

8. Thus, on re-appreciating of the evidence, we also come to the conclusion that the prosecution has failed to establish the case

beyond doubt against the accused.

9. In this appeal against the acquittal, when we scrutinized the grounds of acquittal, we find that the order of acquittal is based on proper appreciation of evidence and the conclusion arrived at by the trial Court is neither perverse nor unsustainable, but plausible and possible from the evidence recorded during the trial Court.

10. In view of the above discussion, we have no hesitation to come to the conclusion that the view taken by the trial Court is not subject to any interference in this appeal against the order of acquittal and hence, the following order.

ORDER

Appeal stands dismissed.

[J. R. VORA,J.]

[M. R. SHAH,J.]

(vijay)